

### Remarks

Applicant respectfully requests that this Amendment After Final Action be admitted under 37 C.F.R. § 1.116.

Applicant submits that this Amendment presents claims in better form for consideration on appeal. Furthermore, applicant believes that consideration of this Amendment could lead to favorable action that would remove one or more issues for appeal.

No claims have been amended, canceled, or added. Therefore, claims 1-58 are now presented for examination.

### 35 U.S.C. §101 Rejection

Claims 30-49 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Specifically, the Final Office Action states that "claims 30, 35, and 41 recited resource determinator, resource optimizer, transition type determinator, VMM operation controller, notification receiver, and operation performer are all software modules/functions." (Final Office Action mailed 8/13/08 at pg. 2, pt. 4.) However, the modules recited in claims 30, 35, and 41 can find support in Figures 2 and 9 and their associated descriptions. These modules are described as part of "operation managing logic," which is described in Figure 1 and paragraph [0037] of the specification. This operation managing logic is part of a processor and as stated in paragraph [0022] of the specification "steps of the invention might be performed by specific hardware components that contain hardwired logic for performing steps." As such, the apparatus claims 30, 35, and 41 are not comprised of software alone and

Docket No.: 42P15752  
Application No.: 10/663,163

encompass a hardware implementation for execution. Therefore, applicant respectfully requests the withdrawal of the present §101 rejection.

### **35 U.S.C. §102 Rejection**

Claims 1-58 stand rejected under 35 U.S.C. §102(b) as being anticipated by Shorter, U.S. Patent No. 5,063,500 ("Shorter"). Applicant submits that the present claims are not anticipated by Shorter.

Shorter discloses a method for executing distributed applications in a data processing network. (Shorter at col. 5, ll. 63-64.) Specifically, Shorter discloses a method to preserve resources during the execution of distributed application programs in an SNA type data processing network that supports program to program communication between an Intelligent Work Station (IWS) and a host processor in accordance with SNA Logical Unit 6.2 protocols when a Virtual Machine Pool Manager exists at the host processor. (Shorter at Abstract.)

Claim 1 recites, in part, identifying a predefined behavior of a virtual machine monitor (VMM) with respect to one or more virtual machines (VMs). Applicant submits that Shorter does not disclose or suggest this feature of claim 1. The Final Office Action cites column 11, lines 60-64 of Shorter as disclosing this feature. (Final Office Action at pg. 9) This portion of Shorter states "[t]he Pool Manager 46 scans its control block 52 entries that represent virtual machines in the VM pool to determine if the user already has a virtual machine in the pool doing work on his behalf." The Final Office Action explains the relation between the cited portion of Shorter and claim 1 as one where:

Shorter teaches the pool manager scanning its control block that represents VMs in the VM pool. compare[ing] whether the USER ID in the

Docket No.: 42P15752  
Application No.: 10/663,163

ALLOCATE matches the entries in the data structures (the entries in the data structure are the predefined behavior of the VMM), and by scanning itself, the pool manager (VMM) identifying a predefined behavior of itself with respect to one or more virtual machines.

(Id.)

However, Applicant fails to see how “the entries in the data structure are the predefined behavior of the VMM,” as contended by the Final Office Action. Applicant can find no statement in Shorter that defines the entries in the data structure as the predefined behavior of the pool manager of Shorter. In addition, Applicant cannot find any teaching in Shorter of predefined behaviors of the pool manager. Therefore, applicant submits that Shorter does not disclose or suggest identifying a predefined behavior of a virtual machine monitor (VMM) with respect to one or more virtual machines (VMs) of claim 1.

Therefore, claim 1, as well as its dependent claims, is patentable over Shorter. Independent claims 30 and 50 also recite, in part, identifying a predefined behavior of a virtual machine monitor (VMM) with respect to one or more virtual machines (VMs). As discussed above, Shorter does not disclose or suggest such a feature. As a result, claims 30 and 50, as well as their respective dependent claims, are patentable over Shorter for the reasons discussed above with respect to claim 1.

Claim 9 recites, in part, determining a type of the transition, the type of the transition being based on invocation information of the VM. Applicant submits that Shorter does not disclose or suggest this feature of claim 9. The Office Action cites claim 1, steps A-C, of Shorter as disclosing this feature. (Final Office Action at pg. 9.)

This portion of Shorter states:

Docket No.: 42P15752  
Application No.: 10/663,163

- A) providing an Operating System for said IWS which attaches an process identifier (PRID) and a thread identifier (THRID) to predefined segments of said resident application program that include LU 6.2 type conversation requests,
- B) transmitting said PRID and THRID identifiers to said host at the time said request is transmitted to said host to permit said Virtual Machine Pool Manager to decide based on said transmitted identifiers and previously received THRID identifiers whether to assign said request to an active or idle virtual machine in said pool;
- C) executing said segments concurrently on different assigned virtual machines at said host when said segments of said application program have different THRIDs;

Applicant submits that there is no disclosure in the above portion of Shorter of determining a type of the transition, the type of the transition being based on invocation information of the VM. Claim 1 of Shorter, namely steps A-C, deal with assigning various thread processes to different virtual machines in a virtual machine pool. There is no discussion or teaching of determining a type of transition based on invocation information of the VM. The Final Office Action states that "the VMM can determine what is the transition to the VM, first transition to a new VM or subsequent transition to an existing VM." (Id.) However, applicant can find no discussion in claim 1 of Shorter of any first or subsequent transition to VMs. As such, Shorter does not disclose or suggest the cited feature of claim 9.

Therefore, claim 9, as well as its dependent claims, is patentable over Shorter. Independent claims 35 and 56 also recite, in part, determining a type of the transition, the type of the transition being based on invocation information of the VM. As discussed above, Shorter does not disclose or suggest such a feature. As a result, claims 35 and 56, as well as their respective dependent claims, are patentable over Shorter for the reasons discussed above with respect to claim 9.

Claim 19 recites, in part, receiving from a VMM a request to perform a transition from the VMM to a VM, the request indicating a type of transition, the type of transition being based on invocation information of the VM. Applicant submits that Shorter does not disclose or suggest this feature of claim 19. The Final Office Action does not provide any specific explanation of how Shorter discloses or suggests this feature, other than stating the claims 19-58 are rejected for the same reasons as claims 1-18. (Final Office Action at pg. 7, pt. 26.) Similar to the discussion with respect to claims 1 and 9, Applicant can find no disclosure or suggestion of the cited feature of claim 19 anywhere in Shorter. As such, Shorter does not disclose or suggest the cited feature of claim 19.

Therefore, claim 19, as well as its dependent claims, is patentable over Shorter. Independent claims 41 and 53 also recite, in part, receiving from a VMM a request to perform a transition from the VMM to a VM, the request indicating a type of transition, the type of transition being based on invocation information of the VM. As discussed above, Shorter does not disclose or suggest such a feature. As a result, claims 41 and 53, as well as their respective dependent claims, are patentable over Shorter for the reasons discussed above with respect to claim 19.

Applicant respectfully submits that the rejections have been overcome and that the claims are in condition for allowance. Accordingly, applicant respectfully requests the rejections be withdrawn and the claims be allowed.

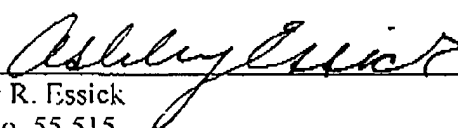
Applicant respectfully submits that the rejections have been overcome, and that the claims are in condition for allowance. Accordingly, applicant respectfully requests the rejections be withdrawn and the claims be allowed.

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: September 30, 2008

  
\_\_\_\_\_  
Ashley R. Essick  
Reg. No. 55.515

1279 Oakmead Parkway  
Sunnyvale, California 94085-4040  
(303) 740-1980

Docket No.: 42P15752  
Application No.: 10/663,163